Trikkon Sdn Bhd v Dato' Mahinder Singh Dulku (Messrs Mahinder Singh Dulku & Co)

HIGH COURT (PULAU PINANG) — ORIGINATING MOTION NO 25–54 OF 2007
GHAZALI CHA J
1 DECEMBER 2008

Legal Profession — Professional discipline — Misconduct — Allegation of failure to pay purchase price of apartment — Whether established — Complaint filed after lapse of more than nine years — Whether reasons for delay justified – Whether respondent guilty of misconduct that would warrant disciplinary action — Legal Profession Act 1976

The appellant herein was appealing against the decision of the Disciplinary Board made on 3 August 2007 dismissing their complaint against the respondent. The three separate tribunals namely, the Investigating Tribunal, the Disciplinary Committee and the Disciplinary Board had found the respondent not guilty of any misconduct which would have warranted disciplinary action to be taken against him pursuant to the relevant provisions of the Legal Profession Act 1976. The appellant filed the complaint against the respondent on 5 August 1998 in respect of matters that allegedly occurred in April 1989, after a lapse of more than nine years. The gist of the appellant's complaint was that somewhere in April 1989, the respondent had purchased an apartment in Penang allegedly for RM165,000 from the appellant. It was also alleged that the respondent had failed to pay the purchase price. The respondent however, contended that he had agreed to take the apartment in question from the appellant in full satisfaction of his fees in respect of the arbitration proceedings, and not pursuant to any agreement to purchase the said property.

Held, dismissing the appeal with costs:

(1) The reasons advanced by the appellant for the delay in filing the complaint against the respondent, namely that they had tried to persuade the respondent to pay for the flat, was wholly unconvincing and was clearly an afterthought, conjured up to bolster a clearly unmeritorious complaint. The court took note of the respondent's unrebutted evidence that he had the financial capacity and the means to pay the complainant the alleged purchase price, if indeed that was his contractual obligation (see para 8).

(2) The allegation contained in the letter of complaint against the respondent did not amount to misconduct on the part of the respondent. At its highest, the said allegations (if true, which was not the case here for the reasons appearing in this judgment) may have amounted to a breach of contract on the part of the respondent for allegedly failing to pay the alleged purchase price (see para 9).

(3) The appellant had in fact paid no money, as fees, to the respondent in respect of the arbitration proceedings. Further, the appellant had also not substantially paid other fees which were due and payable to the respondent in respect of the legal work done by him in a number of other matters (see para 17).

[Bahasa Malaysia summary

Perayu dalam kes ini merayu terhadap keputusan Lembaga Disiplin yang dibuat pada 3 Ogos 2007 yang menolak aduan mereka terhadap responden. Tiga tribunal berasingan iaitu, Tribunal Penyiasatan, Jawatankuasa Disiplin dan Lembaga Disiplin mendapati responden tidak bersalah terhadap salah laku yang membolehkan tindakan disiplin diambil terhadap beliau menurut peruntukan sesuai dalam Akta Profesyen Perundangan 1976. Perayu telah memfailkan aduan terhadap responden pada 5 Ogos 1998 berkenaan perkara-perkara yang didakwa berlaku dalam bulan April 1989, selepas selang lebih sembilan tahun. Inti pati kepada aduan pengadu adalah bahawa, sekitar April 1989 responden telah membeli sebuah pangsapuri di Pulau Pinang yang didakwa berjumlah RM165,000 daripada perayu. Adalah juga didakwa bahawa responden telah gagal membayar harga belian. Walau bagaimanapun responden, menegaskan bahawa beliau telah bersetuju mengambil pangsapuri yang menjadi persoalan daripada perayu setelah penyelesaian sepenuhnya yuran-yuran berkenaan prosiding timbang tara, dan bukan menurut kepada perjanjian bagi membeli hartanah tersebut.

Diputuskan, menolak rayuan dengan kos:

(1) Sebab-sebab yang dikemukakan oleh perayu berkenaan dengan kelewatan memfailkan aduan terhadap responden, iaitu bahawa mereka telah cuba mendesak responden untuk membayar pangsapuri tersebut, adalah langsung tidak meyakinkan dan jelas merupakan suatu fikiran semula, yang dibangkitkan bagi menyokong aduan yang secara jelas tidak bermerit. Mahkamah mengambil perhatian kepada keterangan responden yang tidak disangkal bahawa beliau mempunyai keupayaan kewangan dan berkemampuan bagi membayar harga belian sebagaimana didakwa pengadu. Jika itu merupakan kewajipan kontraktual beliau (lihat perenggan 8).

(2) Dakwaan yang terkandung dalam surat aduan terhadap responden tidak menjurus kepada salah laku di pihak responden. Paling tinggipun, dakwaan tersebut (jika benar, tapi tidak dalam kes ini berdasarkan alasan-alasan dalam penghakiman ini) boleh membawa kepada kemungkiran kontrak di pihak responden kerana dakwaan gagal membayar harga belian sebagaimana didakwa (lihat perenggan 9).

(3) Perayu sebenarnya tidak membuat sebarang bayaran, berkenaan yuran-yuran, kepada responden berkaitan dengan prosiding timbang tara. Selanjutnya, perayu juga tidak membayar secukupnya yuran-yuran yang tertunggak dan perlu dibayar kepada responden berkaitan dengan kerja perundangan yang dibuat oleh beliau dalam beberapa perkara lain (lihat perenggan 17).]

Notes

For cases on misconduct, see 9 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1844–1916

Cases referred to

Au Kong Weng v Bar Committee, Pahang [1980] 2 MLJ 89, CA (refd)
Gana Muthusamy v Tetuan LM Ong & Co [1998] 3 MLJ 341; [1998] 4 CLJ 878, FC (refd)
Howard E Cashin, Re [1989] 3 MLJ 129, HC (refd)
In Re An Advocate and Solicitor [1950] MLJ 113, HC (refd)
Khaw Cheng Bok v John Khoo Boo Lai (Peguamcara dan Peguambela, beramal di bawah nama Ismail, Khoo & Associates) [2003] 5 AMR 12, HC (refd)
Marzaini bt Zainuddin v Majlis Peguam Malaysia [2007] 8 MLJ 697, HC (refd)
Penang Development Corporation v Trikkon Construction Sdn Bhd [1997] 3 MLJ 115; [1997] 3 CLJ 832, CA (refd)

Legislation referred to

Evidence Act 1950 s 114(g)
Legal Profession Act 1976

Clement Cheng (Clement, Dawn & Associates) for the appellant.
V Sithambaram (Sitham & Associates) for the respondent.
G Arumugam for the Bar Council.

Ghazali Cha J:

INTRODUCTION

[1] This is an appeal by the appellant Trikkon Sdn Bhd, by way of notice of originating motion dated 20 September 2007, against the decision of the Disciplinary Board ('DB'), made on 3 August 2007 and communicated to

A the appellant by letter dated 21 August 2007, whereby the Disciplinary Board dismissed the appellant's complaint against the respondent.

[2] It is to be noted at the outset that three separate tribunals, that is to say, the Investigating Tribunal ('IT') the Disciplinary Committee ('DC') and the B Disciplinary Board ('DB') have found the respondent not guilty of any misconduct which would have warranted disciplinary action to be taken against him pursuant to the relevant provisions of the Legal Profession Act 1976 (Pre-Amendment).

C THE ROLE OF THE COURT

[3] In *Gana Muthusamy v Tetuan LM Ong & Co* [1998] 3 MLJ 341; [1998] 4 CLJ 878, Gopal Sri Ram JCA (delivering the judgment of the Court of Appeal) at pp 344–345 (MLJ), at p 881 (CLJ), held as follows:
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> It is primarily for members of the Bar to decide what amounts to conduct unbecoming of an advocate and solicitor in particular circumstances, according to standards established by members of that honourable profession. *Courts must necessarily exercise caution when entertaining an appeal in which the central question* E *is whether particular conduct is unprofessional and cases meriting curial interference will be rare. Otherwise it will be the court and not the profession that will determine the yardstick of the professional behaviour*. (Emphasis added.)

[4] In *Au Kong Weng v Bar Committee, Pahang* [1980] 2 MLJ 89 Raja Azlan F Shah CJ (Malaya) (as His Highness then was) said (at p 91):

> Statutes relating to the legal profession now entrust the supervision of advocates and solicitors' conduct to a committee of the profession, for it knows and appreciates better than anyone else the standards which responsible legal opinion G demands of its own profession.

And further down at p 92, His Highness concluded the judgment of the court as follows:

> H A relationship of trust and confidence between the courts and the members of the Bar is essential for the due administration of justice in this country, and that relationship would be impaired if, on any but the most compelling grounds, the courts were to interfere with the finding of the committee in a matter so peculiarly its concern.

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[5] In Kuala Lumpur High Court CA No R-17B–17 of 2006, *Marzaini bt Zainuddin v Majlis Peguam Malaysia* [2007] 8 MLJ 697, His Lordship, Dato' Hj Abdul Malik bin Hj Ishak J (as His Lordship then was) held (at para No [7] of the judgment) (at p 705):

> Disciplinary proceedings... are designed to enable members of the same profession to decide on the fate of their fellow practitioners. This is simply because members of the same profession should know and appreciate better than anyone else the standards of conduct expected of the legal profession. *The DB, ... consists of senior members of the Bar appointed under Section 93(3) of the Act ... The DB should know better*. (Emphasis added.)

[6] Having in the forefront of my mind the applicable principles established in the cases referred to above, I find that there are absolutely no grounds for me to interfere with the decision of the DB to dismiss the appellant's complaint herein against the respondent.

THE COMPLAINT

[7] The appellant's written letter of complaint to the DB, dated 5 August 1998, is found at pp 1 and 2 of the 'certified true copy of bundle of document' ('BOD') supplied by the DB to the appellant. It was written by a director of the appellant, Choo Ah Beng ('CAB'). The gist of the complaint is that 'somewhere in April 1989 (more than nine years ago)', the appellant allegedly signed a memorandum whereby the respondent agreed to purchase an apartment at No 5–1–2 Edgecumbe Road, Penang allegedly for RM165,000 from the appellant. It is also alleged that the respondent has not paid the purchase price.

DELAY

[8] Before I consider the merits of the above mentioned complaint, it is pertinent to observe that the appellant only filed the complaint against the respondent on 5 August 1998 in respect of matters that allegedly occurred in *April 1989, after a lapse of more than nine years!*

At the IT stage CAB attempted to explain away this delay of nine years. It was however not accepted by the IT (see para 4 of the IT's report at p 122 of the BOD). At the DC stage CAB elaborated his reasons for the delay. I find the reasons for the delay advanced by CAB wholly unconvincing and were clearly afterthoughts, conjured up to bolster a clearly unmeritorious complaint for the reasons set out in this judgment. I have taken note of the respondent's unrebutted evidence that he had the financial capacity and the means to pay the complainant the alleged purchase price, if indeed that was his contractual obligation (see exhibits marked R12, R13 and R14 tendered by the respondent to the DC relating to the respondent's financial capacity). There is further the respondent's unrebutted documentary evidence ('R11') that in February 1989 he had completed the purchase of a residential property for RM180,000, partly financed by a financial institution. The aforesaid unrebutted facts unmistakably point to the truth of the respondent's

A contention that he agreed to take the apartment in question from the appellant in full satisfaction of his fees in respect of the arbitration proceedings, and not pursuant to any agreement to purchase the said property. For a short history of the arbitration proceedings in question see the judgment of the Court of Appeal in *Penang Development Corporation v* B *Trikkon Construction Sdn Bhd* [1997] 3 MLJ 115; [1997] 3 CLJ 832.

MISCONDUCT

C **[9]** In my judgment none of the allegations contained in the letter of complaint amount to any misconduct on the part of the respondent. At its highest the said allegations (if true, which is not the case here for the reasons appearing in this judgment) may have amounted to a breach of contract on the part of the respondent for allegedly failing to pay the alleged purchase price. The authority for the proposition, that a breach of contract, on the part D of a solicitor, is not misconduct is the case of *In re An Advocate and Solicitor* [1950] MLJ 113 (pp 192–195 of the bundle of authorities of the respondent) where at p 116 of the report His Lordship Thomson J (as His Lordship then was) said:

E > In the circumstances, I propose to say that the acts found by the committee do not make out the offence of grossly improper professional conduct or any other offence under s 26. What these findings amount to is that there has been a breach of contract on the part of AB. The penalty imposed by the courts for breach of contract is damages and costs and I can find no authority for saying that where the F party in breach of a contract is a solicitor he would be subject to punishment for improper conduct unless it is clearly found that the breach has been attended by some circumstance of dishonesty.
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> Apart from any question of authority, I am not prepared to say that there is anything disgraceful or dishonourable in a solicitor refusing to comply with a request to pay over money to a client unless it is shown that refusal is actuated by G dishonest motives. *It seems to me that if I were to hold otherwise it would be unsafe for a solicitor to attempt to defend himself against any claim made against him by a client, however confident he was of the justice of his case*. (Emphasis added.)

H **[10]** The above dicta of Thomson J was quoted with approval by Wee Chong Jin CJ (delivering the judgment of the court) in the case of *Re Howard E Cashin* [1989] 3 MLJ 129 (pp 196–207 of the respondent's bundle of authorities).

I THE ALLEGED MEMORANDUM, THE DEED OF ASSIGNMENT AND CREDIBILITY OF CAB

[11] The respondent and two of his witnesses had testified at the IT stage of the proceedings. The same witnesses (together with one additional witness)

testified at the DC stage. CAB failed to appear at the continued hearing before the DC after he had completed his evidence-in-chief but not his cross-examination in full by the respondent and his counsel. In the result the testimony of the respondent and his witnesses remained unchallenged.

Be that as it may it is useful to refer to part of the IT's report (pp 120–123 of BOD) where the IT categorically rejected the allegation of CAB that he had signed a memorandum in the presence of the respondent as alleged in his letter of complaint. This is what the IT said (see para 6 at p 123 of BOD):

> Mr Choo (the Appellant) admitted signing page 3 of R3 (the Deed of Assignment)and that the document he remembered signing was 3 pages. He also admitted that the common seals of the developer and the complaint affixed thereto were in order as well as other signatures. The Respondent's witness, Mr. Foong Kai Choong ('Mr Foong'), an advocate and solicitor, testified that he attested the Respondent's execution of R3 and that he would not have attested any document if it was not complete. The Tribunal noticed that Mr Foong was the Respondent's legal assistant at the material time but has left many years ago so that the Tribunal has no reason to believe that his testimony was prejudiced. Further, Mr. Foong's testimony was not challenged. The Respondent's other witness, Jalil, also confirmed the Respondent's testimony that the complainant knew that the assignment of the flat was in lieu of fees for the arbitration proceedings. Even though Jalil would be expected to give prejudicial evidence because he was and still is the Respondent's chief clerk and the person occupying the flat rent free since some 2 years after the Respondent took possession of it from the complainant, the Tribunal noted that his testimony was consistent.

[12] Paragraph Nos 3, 4 and 5 of the IT's report (p 122 of the BOD) contains some fundamental findings of fact which touch on the credibility of CAB as follows:

> (3) The Respondent denied any deed of misconduct and testified that the consideration for the flat had been paid for by contra or by way of set off against his fees for the arbitration case, which arrangement the Complainant denied. The Tribunal found that this arrangement was plausible because even though the arbitration case was a complex matter involving some 911 architect's instructions and 19 sessions, no bill was ever produced for the arbitration case as opposed to the bill produced in the Bundle of Documents for all the other cases in which the Respondent acted for the Complainant and other related companies. The Tribunal found that this was consistent with the Respondent's stand and testimony that his fees had been paid by way of setoff. Mr Choo admitted that the claim in the arbitration case was for 'millions'. The Tribunal took note that the Complainant's replies at the hearing to questions of payment of bills were somewhat casual and that no receipt or evidence was produced in the Bundle of Documents or at the hearing to prove Mr Choo's claim that the Complainant had paid the

Respondent some fees for the arbitration case. The Tribunal also noted the Complainant's tendency to deny that fees were owing to the Respondent for the cases handled by the Respondent. Thus, the Tribunal found it inconceivable that the Respondent would not have asked for payment of at least some of his fees for such a complex case. The Respondent explained that even though his fees would have been some RM600,000, he agreed to take the flat at a much lower value because both parties gained from it in that he was paid in kind in advance for the arbitration case and the Respondent [Complainant] saved substantially on fees. The Respondent further testified that it was then economic recession and the Respondent [Complainant] could not dispose of the flat.

(4) Further, the Complainant's only explanation that the reason why the Complaint was only filed some 9 years after the matter was because he had tried to persuade the Respondent to pay for the flat. The Tribunal found it strange that if the Complainant so strongly maintained that no payment was made by the Respondent for this flat, the Complainant did not adduce any evidence to show that he had tried to claim for the payment either by way of notices of demand or instituting proceedings in the court.

(5) Several letters, including that those marked as pages 63, 64 and 65 of the Bundle of Documents mentioned the Respondent as the owner of the flat. The Tribunal noted that both the letters marked as pages 63 and 64, though from the developer clearly indicated the Respondent as the owner or proprietor. These 2 letters were even signed by Mr. Choo as the developer's director. Mr. Choo also admitted in his testimony that he was the person who supplied the information as to the purchasers' names and particulars for this housing project in the developer's letter dated 13th November 1989 to the Jabatan Nilaian (marked 'C' in the Respondent's letter dated 13th February 2003 to the Tribunal). When asked, Mr Choo admitted that the developer did not subsequently notified the local council that the Respondent had not paid for the flat. He added it was because: 1. The Respondent was occupying the flat; 2. he was trying to settle the matter with the Respondent; and 3. the letter was not from the Complainant, but the developer. When further asked if the Complainant had ever notified any other authority that the Respondent was not the owner, Mr Choo replied that he did not see the purpose. *The Tribunal found all these reasons unconvincing*. (Emphasis added.)

[13] I have quoted the above passages from the IT report purely to indicate that my reasons for rejecting CAB's testimony in respect of the matters therein set out are essentially the same as that of the IT. The facts relied on

by the IT and other additional facts adduced at the DC stage are also before me as contained in BOD. I have carefully scrutinised all the relevant evidence contained in BOD in this regard and have no hesitation in rejecting CAB's allegations.

[14] I also observe that the appellant called no other witnesses except CAB at the IT stage. Similarly he was the sole witness to testify at the DC proceedings. The appellant could have called other witnesses in support of its complaint, but saw it fit to call no one except CAB. No explanation was given as to why the other directors of the appellant and/or the directors of the developer, that is to say, City Freeholds Sdn Bhd (of which the appellant was a director) were not called to rebut the authenticity and/or due execution of the deed of assignment, that is to say, R3. In the result I am compelled to invoke s 114(g) of the Evidence Act 1950 against the appellant. I therefore hold that R3 was and is authentic and duly executed by the parties therein named particularly in the absence of any rebuttal evidence from the appellant. In coming to this conclusion I accept the unchallenged evidence of the respondent, given at both the IT and the DC stage, including that of his other witnesses who had testified at both stages of the proceedings as to the authenticity of R3.

[15] After the conclusion of the proceedings before the DC, the respondent's counsel filed two written submissions, one dated 24 March 2006 and another dated 3 April 2006 which form part of BOD. As indicated above the appellant took no further part in the proceedings and did not file any submission to assist the DC in its deliberations. A reading of the respondent's counsel's two written submissions make it abundantly clear that CAB had given one version of the relevant or material facts at the IT stage and another, largely inconsistent version, at the DC stage, thereby clearly abusing the privilege given to him by the DB to air his grievances fully against the respondent with honesty and candour. I find that the respondent's counsel correctly analysed the relevant facts and the applicable law. In the circumstances I adopt the contents of the said submissions as part of my judgment herein.

[16] In my evaluation of the credibility of CAB, I take into consideration what His Lordship, Kamalanathan Ratnam J (as he then was) said in *Khaw Cheng Bok v John Khoo Boo Lai (Peguamcara dan Peguambela, beramal di bawah nama Ismail, Khoo & Associates)* [2003] 5 AMR 12 (pp 117–157 of respondent's bundle of authorities) at p 47 of the report:

> Initially the plaintiff contended that the defendant issued him no receipts for the payments made ... It is very easy to allege, especially when the relationship between a solicitor and his client has broken down, that the client had paid fees for which no receipt has been issued ... Unless a client can show by collateral evidence

A such as cheque butts, bank statements showing money credited to the solicitor's account, an eye witness who saw the client pay the money and the lawyer pocketing it but not wanting to issue a receipt or such like evidence, the court must be reluctant to entertain any allegation of payment.

B And earlier at p 46 of the report, the learned judge said:

To my mind this clearly goes to show the character of the plaintiff. He is prepared to concoct a serious allegation against the defendant and disparage him merely to be able to deny payment of the defendant's dues. This manipulative conduct of the plaintiff is unbecoming of a person holding the post of a trustee of the will of his C deceased father. To cast aspersions against the defendant, to call him a cheat and to accuse him of using threats, pressure, duress and undue influence all because he did not want to pay the defendant before engaging the present solicitors, is so reprehensible that the plaintiff ought not to be allowed to use the court and its process to achieve his ignoble end of denying the defendant's dues.

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[17] Having carefully perused CAB's testimony, as contained in BOD, (and having tested it against the relevant undisputed contemporary documents contained in BOD) I find that there are glaring inconsistencies in CAB's examination-in-chief and his subsequent cross-examination which thus cast E serious doubts on his credibility. I also find that the appellant had in fact paid no money, as fees, to the respondent in respect of the arbitration proceedings in question save and except the apartment in question in circumstances as testified by the respondent. As I have said, these matters have been highlighted in the respondent's counsel's two written submissions alluded to F above which I accept.

[18] I further note that not only has the appellant not paid any moneys as fees to the respondent in respect of the arbitration proceedings but has also (together with its other associate companies) not substantially paid other fees G due and payable to the respondent in respect of legal work done by him in a number of other matters (see letters at pp 19–62 of BOD). CAB's pathetic attempt to show that he had in fact paid such fees flies against the very contents of the documentary evidence adduced and relied by him at the DC H proceedings (see exhs P5, P6, P8, P9 and P10 contained in BOD).

THE APPELLANT'S WRITTEN SUBMISSION IN THE INSTANT APPEAL

I **[19]** Although the appellant had relied on various grounds of appeal, contained in its motion dated 20 September 2007, and which was supported by the affidavits of CAB affirmed on 17 September 2007, 12 November 2007 and 17 April 2008 respectively, the appellant's counsel confined his written submission to only two points. I therefore take it (and it is also trite law) that

the appellant has thereby elected to abandon its other grounds of appeal as contained in the said motion and the said affidavits.

[20] The first point is set out in para No 1 of the appellant's counsel's written submission which reads as follows:

> 1 The Appellant's case is that the Respondent had misled the Complainant into signing the Deed of Assignment whereby the property known as apartment 5-1-2 Edgecumbe Court, Edgecumbe Road, Penang was purportedly assigned to the Respondent by the Complainant to offset money owing by the Complainant to the Respondent's work concerning arbitration.

[21] In advancing the above submission, it would now appear that the appellant has conceded that R3 was indeed an authentic deed but that the appellant was misled into signing it. Save and except for the aforesaid bare allegation, the appellant's counsel has not explained, in his written submission, as to how the appellant was misled into signing R3 as alleged. What about the other directors of the appellant and City Freeholds Sdn Bhd (the developer) who signed the deed of assignment and affixed the common seals of both the appellant and City Freeholds Sdn Bhd? Were they also misled? The appellant's written submission has not covered this matter. I therefore take it that the said directors were not so misled and that the common seals of both companies were duly affixed as provided for by their respective memorandum and articles of association. I therefore reject the appellant's counsel's submission that the appellant was misled as alleged.

[22] The second point relied on by the appellant's counsel in his written submission before me is set out in para 4 thereof, whereby he submitted that the DC made certain findings of fact (therein listed) which support para 5 of his written submission. However I note that the respondent had previously commented in writing regarding the aforesaid findings of the DC (see exh marked 'D' attached to the written submission of Dato' V Sithambaram of counsel for the respondent dated 10 July 2008). I agree with the contentions of the respondent contained therein and adopt the same as part of this judgment. In the result I also reject the appellant's counsel's submission on this point. In particular I hold that it is not misconduct on the part of a solicitor not to timeously stamp a document which was clearly meant to be a document in escrow (see pp 72–74 for copy of R3) as was the case in respect of R3. In this regard cl 3 of R3 is pertinent and it reads as follows:

> 3 This Assignment shall remain in full force until such time as it shall be revoked by the due execution and registration thereof by the Assignor of a valid legal transfer over the said property in favour of the Assignee.

A The issue of independent advice was also covered by the respondent's counsel in appendix C attached to his abovementioned written submission, the relevant paragraphs whereof are 3(2), 4 and part of 6 and which are reproduced as follows:

B 3(2) In *Allison v Clayhills* (1908) 97 LT 709 Parker J observed at p 712 of the report as follows:

> Thus, if a solicitor actually engaged to conduct or is conducting for his client an action, say, for slander, and, while that action is pending, meets his client in the
C hunting field and bargains and buys from him a horse, each party relying upon his own knowledge of horseflesh, that transaction will stand on the same footing as a transaction between strangers, because the matter is entirely outside any confidential relationship between the parties, and the solicitor owes his client no duty whatever in the particular matter... In *Wright v Carter* (S7 LT Rep 624:
D [1903] 1 Ch 27) Stirling, LJ said, 'It must be further shown that the client had independent advice', but I doubt whether the learned Lord Justice really meant to lay this down as an invariable rule whatever might be the nature of the transaction in dispute, for, if this were an invariable rule in all transactions, it is difficult to see how either *Edwards v Meyvrick* (2 Hare 60) or *Montesquieu v Sandys* (18 Ves 313) were rightly decided; and it is to be observed that in *Wright*
E *v Carter* (ubi sup) *Vaughan Williams, LJ refuses to lay down any such invariable rule, and Cozens-Hardy, LJ, in stating what the solicitor must prove, when the onus for upholding the transaction lies upon him, does not include the fact that the client had independent advice*. (Emphasis added.)

F 4 AGREEMENTS TO FEES

The solicitor's agreement as to fees may be in writing as stipulated in Section 116 of the LPA 1976 read with Section 118 of the LPA 1976. Section 121 of the LPA 1976 covers agreements which are NOT IN WRITING. Thus according to the
G LPA 1976 agreements in relation to fees may be in writing or ORAL. See also LAWYERS by Julian Disney (Second Edition) at pages 417–419 thereof. At page 418 the author refers to the case of *Westmelton (vie) Ptv Ltd v Archer* [1982] vr 305 at pp 312–313, 319 and makes reference to a passage of the judgment at p 419 as follows:

H > But once the court is satisfied, as the learned trial Judge was, that the solicitors dealt fairly and honestly and openly with a sophisticated and well-informed corporate client, and that the client in fact was in no way relying upon any confidence or expectation of legal advice of that character or of any character, *then the court is entitled to conclude that there was no duty to advise further.*

I 6 The evidence also shows that the director of the Complainant who was a contractor was also a director of City Freeholds Sdn Bhd, a developer. In other words the Complainant was not only a sophisticated and knowledgeable contractor and developer but also well versed in matters of sale and purchase of properties, requiring no independent advice.

CONCLUSION

[23] Having regard to the totality of the evidence contained in BOD and the written submissions of the counsel for the parties, and the applicable law I have no hesitation in dismissing this frivolous appeal with costs to be taxed and when so taxed to be paid by the appellant to the respondent.

Appeal dismissed with costs.

Reported by Ashgar Ali Ali Mohamed